

UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION VII
901 NORTH FIFTH STREET
KANSAS CITY, KANSAS 66101

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ENVIRONMENTAL PROTECTION
AGENCY-REGION VII
REGIONAL HEARING CLERK

BEFORE THE ADMINISTRATOR

In the Matter of)	
)	
TWIN RIVERS FOODS, INC.)	Docket No. EPCRA-07-2004-0147
)	CERCLA-07-2004-0147
Respondent)	
)	CONSENT AGREEMENT AND FINAL
)	ORDER

PRELIMINARY STATEMENT

This proceeding for the assessment of a civil penalty was initiated on March 19, 2004, pursuant to Section 109 of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), 42 U.S.C. § 9609, and Section 325 of the Emergency Planning and Community Right to Know Act (EPCRA), 42 U.S.C. § 11045, when the United States Environmental Protection Agency (EPA or Complainant) issued to Twin Rivers Foods, Inc (Respondent) a Complaint and Notice of Opportunity for Hearing.

The Complaint charged Respondent with violating § 103(a) of CERCLA, 42 U.S.C. § 9603, 40 C.F.R. § 302.6; and § 304(b) of EPCRA, 42 U.S.C. § 11004(b), 40 C.F.R. § 355.40(b).

Subsequently, Complainant and Respondent entered into negotiations in an attempt to settle the allegations contained in the Complaint. The Consent Agreement and Final Order (CAFO) set forth below is the result of these negotiations and represents settlement of this Complaint.

CONSENT AGREEMENT

1. For the purpose of this proceeding, Respondent admits the jurisdictional allegations of this Complaint and neither admits nor denies the factual allegations of the Complaint.

2. Respondent waives its right to a judicial or administrative hearing on any issue of fact or law set forth in the Complaint, and waives its right to appeal the Final Order accompanying this Consent Agreement.

3. Respondent and Complainant agrees to conciliate this matter without the necessity of a formal hearing and to bear their respective costs and attorney's fees.

4. Respondent hereby represents and warrants that its management has familiarized itself with the reporting requirements with respect to releases of the reportable quantity of anhydrous ammonia, a substance utilized in its operations. Respondent further represents and warrants that it has installed an ammonia leak detection alarm system, shutdown the front refrigeration systems, and reduced the risk of ammonia spill by removing 3,392 pounds of ammonia in a separate refrigeration system.

5. Respondent consents to the issuance of the Final Order hereinafter recited and consents to the payment of a mitigated civil penalty in the amount of Twenty Thousand Dollars (\$20,000.00) within thirty days of the effective date of the Final Order.

6. Respondent certifies by signing this CAFO that to its knowledge it is presently in compliance with CERCLA and EPCRA, and all regulations promulgated thereunder.

7. Nothing in this Consent Agreement shall be construed as a release from, or to insulate Respondent from, any other action under any law and/or regulation administered by the U.S. Environmental Protection Agency, that was not identified in the Complaint.

8. Failure to timely pay the assessed penalty may result in the referral of this matter to the United States Department of Justice for collection.

FINAL ORDER

Pursuant to the provisions of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), 42 U.S.C. § 9601, the Emergency Planning and Community Right to Know Act (EPCRA), 42 U.S.C. § 11001, and based upon the information set forth in this Consent Agreement, IT IS HEREBY ORDERED THAT:

1. Respondent shall pay a civil penalty of Twenty Thousand Dollars (\$20,000.00) in the following manner: Ten Thousand Dollars (\$10,000.00) shall be made payable to the "Treasurer, United States of America" in the form of Cashier's or Certified Check and mailed to: U.S. EPA-Region VII (Regional Hearing Clerk), C/O Mellon Bank, P.O. Box 371099M, Pittsburgh, Pennsylvania 15251. Ten Thousand Dollars (\$10,000.00) shall be made payable to the "EPA Hazardous Substance Superfund" and mailed to: EPA-Region VII, Superfund Accounting, C/O Mellon Bank, P.O. Box 371099M, Pittsburgh, Pennsylvania 15251. The payments shall be identified as In the Matter of Twin Rivers Foods, Inc. A copy of the checks shall be forwarded to Rupert G. Thomas, Office of Regional Counsel, Region VII, EPA, 901 North 5th Street, Kansas City, Kansas 66101.

2. The payments shall be paid on or before 30 days of the effective date of the Final Order (the date by which the payments must be received shall be hereinafter be referred to as the "due date"). The effective date of this order shall be the date on which it is signed by the Regional Judicial Officer.

3. Respondent's failure to pay any portion of the civil penalty assessed herein in accordance with the provisions of this Order may result in the commencement of a civil action in Federal District Court to recover the remaining balance, along with penalties and accumulated interest, and any other assessments and/or penalties permitted by law.

4. Respondent and Complainant shall bear their own costs and Attorney's fees incurred as result of this matter.

5. This Consent Agreement and Final Order constitutes a settlement by EPA of all civil claims for penalties alleged in the Complaint for violations of Section 103 of CERCLA, 42 U.S.C. §9603, and the regulations promulgated pursuant to Section 102 of CERCLA, 42 U.S.C. §9602, and codified at 40C.F.R. Part 302; and Section 304 of EPCRA, 42 U.S.C. §11004, and the regulations promulgated pursuant to Section 328 of EPCRA, 42 U.S.C. §11048, and codified at 40 C.F.R. Part 355. Twin Rivers' performance of its obligation under this Consent Agreement and Final Order shall resolve, and the United States Environmental Protection Agency covenants not to sue or to take administrative action relating to, the civil claims alleged in the Complaint filed in this Action.

COMPLAINANT:
U.S. ENVIRONMENTAL PROTECTION AGENCY

By: 

Rupert G. Thomas
Attorney
Office of Regional Counsel

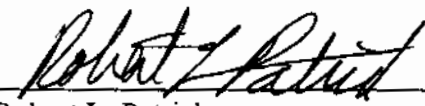
Date: July 12, 2004

RESPONDENT:
TWIN RIVERS FOODS, INC.

By: 

Date: July 6, 2004

IT IS SO ORDERED. This Order shall become effective immediately.


Robert L. Patrick
Regional Judicial Officer
U.S. Environmental Protection Agency
Region VII

Date: July 20, 2004

IN THE MATTER OF Twin Rivers Foods, Inc., Respondent
Docket No. EPCRA-07-2004-0147; CERCLA-07-2004-0147

CERTIFICATE OF SERVICE

I certify that the foregoing Consent Agreement and Final Order was sent this day in the following manner to the addressees:


Copy hand delivered to
Attorney for Complainant:

Rupert G. Thomas
Senior Assistant Regional Counsel
Region VII
United States Environmental Protection Agency
901 N. 5th Street
Kansas City, Kansas 66101

Copy by U.S. Certified Mail,
Return Receipt Requested, to:

Michael P. Comodeca
Spencer Fane Britt & Browne LLP
Suite 700, 40 Corporate Woods
9401 Indian Creek Parkway
Overland Park, Kansas 66210-2005

Dated: 7/20/04


Kathy Robinson
Regional Hearing Clerk